

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made and entered into effective as of _____, 2024 (the "Effective Date"), between Mith-ih-Kwuh Economic Development Corporation d/b/a ("MEDC"), a federally chartered corporation wholly owned by the Coquille Indian Tribe, and _____ ("Consultant") whose address is _____.

RECITALS:

A. MEDC received a notice of award for federal grant funds under the U.S. Department of Transportation ("USDOT") Maritime Administration ("MARAD") Port Infrastructure Development Program ("PIDP") fiscal year 2023 for its Ko-Kwel Wharf dock rehabilitation and improvement project (the "Project"). As of the Effective Date, MEDC has applied for additional funding for the Project through the Oregon Department of Transportation ("ODOT") Connect Oregon grant program and anticipates that grant awards will be announced in September 2024.

B. As of the Effective Date, MEDC is negotiating the terms and conditions of a grant agreement with MARAD (the "Grant Agreement"). Further, if MEDC is awarded funds through the ODOT Connect Oregon grant program, MEDC anticipates executing an additional grant agreement with ODOT (the "CO Grant Agreement").

C. MEDC issued a certain Request for Proposals dated May __, 2024 (the "RFP") for certain professional engineering, design, consulting, and related services for portions of the Project, and Consultant was the successful proposer. Consultant has expertise and knowledge in engineering, design, and related services necessary for marine facilities.

D. Consultant will perform the Services (as defined below) for and on behalf of MEDC in accordance with, and subject to, the terms and conditions contained in this Agreement. Work to be performed under this Agreement will be funded in part with federal PIDP grant funds from MARAD and may be funding in part with funds from the Connect Oregon grant program.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Consulting Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Consultant will perform the following engineering, design, consulting, oversight, and related services for and on behalf of MEDC (collectively, the "Services"): (a) those engineering, design, consulting, and related services described in the attached Schedule 1.1 (the "Scope of Work"); (b) any other necessary or appropriate services customarily provided by Consultant in connection with its performance of those services described in the Scope of Work and/or otherwise required under PIDP grant requirements, guidance, and/or rules and/or Connect Oregon grant program requirements, guidance, and/or rules, if applicable; (c) those services described in the RFP as directed by MEDC; and (d) such other design, engineering, consulting, oversight, and related services requested by MEDC from time to time.

Consultant will (w) consult with and advise MEDC on all matters concerning the Services reasonably requested by MEDC, (x) communicate all matters and information concerning the Services to MEDC's chief executive officer (or her designee) and perform the Services under the general direction of the chief executive officer (or her designee), (y) devote such time and attention to the performance of the Services as MEDC deems necessary or appropriate, and (z) perform the Services to the best of Consultant's ability. Consultant and MEDC will routinely consult with each other to ensure effective and efficient provision of the Services and minimize expense. Consultant acknowledges and agrees that MEDC may cause or direct other persons or contractors to provide services for and on behalf of MEDC that are the same or similar to the Services provided by Consultant under this Agreement.

1.2 Schedule of Services. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, all Services will be completed in accordance with the schedule of services provided on the attached Schedule 1.2.

1.3 Condition Precedent. Notwithstanding anything contained in this Agreement to the contrary, (a) MEDC's performance of its obligations under this Agreement is conditioned on Consultant's performance of its obligations under this Agreement, including, without limitation, those Consultant obligations described under Section 4.4, (b) this Agreement is made subject to the requirements of the PIDP grant program rules to the extent MEDC seeks reimbursement from MARAD for any Services, and (c) if awarded funds under the Connect Oregon grant program, this Agreement is made subject to the requirements of the Connect Oregon grant program rules to the extent MEDC seeks reimbursement from ODOT for any Services.

2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, in consideration of Consultant's timely performance of the Services in accordance with this Agreement, MEDC will pay Consultant in accordance with the fee schedule attached hereto as Schedule 2.1. Consultant will submit monthly invoices to MEDC concerning the Services performed by Consultant during the immediately preceding month (each an "Invoice"). Each Invoice will contain the following information: (a) a summary of the Services performed by Consultant (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; (c) the percentage of the total Services actually completed during the applicable billing period as reasonably determined by MEDC (and as demonstrated by task and corresponding summary of charges); (d) the applicable hourly rate(s) for performing the Services; and (e) all other information reasonably requested by MEDC. MEDC will pay the amount due under each Invoice within thirty (30) days after MEDC has reviewed and approved the Invoice. MEDC's payment will be accepted by Consultant as full compensation for performing the Services to which the Invoice relates. No compensation will be paid by MEDC for any portion of the Services not performed. Notwithstanding anything contained in this Agreement to the contrary, total compensation payable by MEDC under this Agreement for the performance of the Services will not exceed \$_____.

2.2 No Benefits; No Reimbursement. MEDC will not provide any benefits to Consultant, and Consultant will be solely responsible for obtaining Consultant's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Consultant will provide, at Consultant's cost and expense, all materials, equipment, and supplies necessary or appropriate to perform the Services. MEDC will not reimburse Consultant for any expenses Consultant incurs to perform the Services.

3. Relationship.

3.1 Independent Contractor. Consultant is an independent contractor of MEDC. Consultant is not an employee of MEDC. Consultant will be free from direction and control over the means and manner of performing the Services, subject only to the right of MEDC to specify the desired results. This Agreement does not create an agency relationship between MEDC and Consultant and does not establish a joint venture or partnership between MEDC and Consultant. Consultant does not have the authority to bind MEDC or represent to any person that Consultant is an agent of MEDC. Consultant has the authority to hire other persons to assist Consultant in performing the Services (and has the authority to fire such persons).

3.2 Taxes; Licenses. MEDC will not withhold any taxes from any payments made to Consultant, and Consultant will be solely responsible for paying all taxes arising out of or resulting from Consultant's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Consultant will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

4. Representations; Warranties; Covenants. In addition to any other Consultant representation, warranty, and/or covenant made in this Agreement, Consultant represents, warrants, and covenants to MEDC as follows:

4.1 Authority; Binding Obligation; Conflicts. Consultant is duly organized, validly existing, and in good standing under applicable Oregon laws. Consultant has full power and authority to sign and deliver this Agreement and to perform all Consultant's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Consultant, enforceable against Consultant in accordance with its terms. By signing below, Consultant certifies that Consultant (and Consultant's principals) are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Services under this Agreement. The signing and delivery of this Agreement by Consultant and the performance by Consultant of all Consultant's obligations under this Agreement will not (a) breach any agreement to which Consultant is a party, or give any person the right to accelerate any obligation of Consultant, (b) violate any law, judgment, or order to which Consultant is subject, or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Quality of Services. Consultant will perform the Services to the best of Consultant's ability, diligently, in good faith, in a professional manner, free from errors and omissions, and in accordance with the terms and conditions contained in this Agreement. The Services will be performed in accordance with the Laws (as defined below). Consultant will be solely responsible for the Services. Consultant will make all decisions called for promptly and without unreasonable delay. All materials, documents, and/or products prepared by Consultant will be accurate, complete, unambiguous, prepared properly, and in compliance with the Laws.

4.3 Insurance. During the term of this Agreement, Consultant will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Consultant's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of not less than

\$___,000,000 per occurrence, \$___,000,000 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Consultant in connection with Consultant's performance of the Services with limits of not less than \$___,000,000 per occurrence, \$___,000,000 in the aggregate; and (c) errors and omissions insurance with limits of not less than \$___,000,000 per occurrence, \$___,000,000 in the aggregate. Each liability insurance policy required under this Agreement will be in form and content satisfactory to MEDC, will list MEDC and each MEDC Representative (as defined below) as an additional insured, and will contain a severability of interest clause. The insurance Consultant is required to obtain under this Agreement may not be cancelled without ten (10) days' prior written notice to MEDC. Consultant's insurance will be primary and any insurance carried by MEDC will be excess and noncontributing. Consultant will furnish MEDC with appropriate documentation evidencing the insurance coverage (and provisions) and endorsements Consultant is required to obtain under this Agreement upon Consultant's execution of this Agreement and at any other time requested by MEDC. If Consultant fails to maintain insurance as required under this Agreement, MEDC will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Consultant immediately upon MEDC's demand. If required under applicable law, Consultant will obtain and maintain workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable law. Workers' compensation insurance will contain a waiver of subrogation in favor of MEDC. **[To be updated per MEDC insurance requirements]**

4.4 Compliance With Laws. Consultant will comply and perform the Services in accordance with the Laws. Without otherwise limiting the generality of the immediately preceding sentence, Consultant will comply with each obligation applicable to Consultant and/or this Agreement. Prior to the Effective Date, Consultant obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services. The Services will be performed subject to and in accordance with all applicable federal PIDP requirements, including, without limitation, those federal provisions and clauses attached hereto as Exhibit A. For purposes of this Agreement, the term "Law(s)" means all applicable federal, state, tribal, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Consultant, this Agreement, the PIDP grant program, ODOT Connect Oregon grant program requirements (if awarded), and/or the Services, including, without limitation, all applicable Coquille Indian Tribe (the "Tribe") ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

4.5 Indemnification. To the fullest extent permitted by the Laws, Consultant will defend, indemnify, and hold MEDC and each present and future MEDC employee, officer, shareholder, agent, and representative (individually and collectively, "MEDC Representative(s)"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused by Consultant's acts and/or omissions (and/or the acts and/or omissions of Consultant's directors, officers, shareholders, employees, agents, representatives, and/or contractors (individually and collectively, "Consultant Representative(s)"); (b) Consultant's failure to pay any tax arising out of or resulting from the performance of the Services; (c) Consultant's performance of the Services; and/or (d) Consultant's breach and/or failure to perform any Consultant representation, warranty, covenant, and/or obligation contained in this Agreement. Consultant's indemnification obligations provided in this Section 4.5 will survive the termination of this Agreement.

4.6 Assignment of Studies and Reports. Consultant assigns all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to MEDC upon the earlier of MEDC's request or the termination of this Agreement. All copies of the materials provided to MEDC will become the property of MEDC who may use them without Consultant's permission for any proper purpose relating to the Services, including, without limitation, additions to or completion of the Services. Consultant will defend all suits or claims for infringement of patent, trademark, and/or copyright for which Consultant is responsible (including, without limitation, any claims which may be brought against MEDC), and Consultant will be liable to MEDC for all losses arising therefrom, including costs, expenses, and attorney fees.

4.7 Records. Consultant will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of five years after the expiration or earlier termination of this Agreement. Consultant's records will be maintained in accordance with sound accounting practices. Consultant's records concerning the Services, including, without limitation, Contractor's time and billing records, will be made available to MEDC for inspection, copying, and/or audit immediately upon MEDC's request.

5. Term; Termination.

5.1 Term of Agreement. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until completion of the Services (which in no event will be later than _____, 2024) unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties' mutual written agreement.

5.2 Termination by Mutual Agreement or Prior Notice. Notwithstanding anything contained in this Agreement to the contrary, (a) this Agreement may be terminated at any time by the mutual written agreement of MEDC and Consultant, and/or (b) either may terminate this Agreement for convenience and without cause by giving the other party thirty (30) days' prior written notice of such termination.

5.3 Immediate Termination. Notwithstanding anything contained in this Agreement to the contrary, MEDC may terminate this Agreement immediately upon notice to Consultant upon the happening of any of the following events: (a) Consultant engages in any form of dishonesty or conduct involving moral turpitude related to Consultant's independent Consultant relationship with MEDC or that otherwise reflects adversely on the reputation or operations of MEDC; (b) Consultant fails to comply with any applicable law related to Consultant's independent Consultant relationship with MEDC; (c) continuous or repeated problems occur in connection with the performance of the Services; and/or (d) Consultant breaches and/or otherwise fails to perform any Consultant representation, warranty, covenant, and/or obligation contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by MEDC in its sole discretion.

5.4 Consequences of Termination. Upon termination of this Agreement, MEDC will not be obligated to reimburse or pay Consultant for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Consultant will deliver to MEDC all materials and documentation, including raw or

tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by MEDC will not constitute a waiver or termination of any rights, claims, and/or causes of action MEDC may have against Consultant.

5.5 Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Consultant will not assign this Agreement to any person without MEDC's prior written consent. This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

6.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), MEDC and Consultant will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute.

6.3 Governing Law; Venue. The laws of the Coquille Indian Tribe shall govern, in all respects, the interpretation of this Agreement. Generally, and for the purposes of enforcement of rights under this Agreement, Consultant consents to the jurisdiction of the Coquille Indian Tribe, Coquille Tribal Council, and the Coquille Tribal Court. The Coquille Tribal Court will exclusively hear all disputes arising out of or relating to this Agreement. Nothing in this Agreement waives the sovereign immunity of the MEDC. Consultant does not have the ability or authority to waive the MEDC's sovereign immunity or consent to be sued on behalf of MEDC.

6.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email

transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by MEDC and Consultant. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Consultant has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.6 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability Consultant, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

6.9 Confidentiality. During the term of this Agreement, and at all times thereafter, Consultant will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, and/or disclose any Confidential Information to any person, or remove or make reproductions of any Confidential Information, except that Consultant may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Consultant promptly notifies the chief executive officer of the order and complies with any applicable protective or similar order. Consultant will promptly notify the chief executive officer of any unauthorized use, communication, or disclosure of any Confidential Information and will assist MEDC in every way to retrieve any Confidential Information that was used, communicated, or disclosed by Consultant and will exert Consultant's best efforts to mitigate the harm caused by the unauthorized use, communication, or disclosure of any Confidential Information. Upon the earlier of MEDC's request or termination of this Agreement, Consultant will immediately return to MEDC all documents, instruments, or materials containing any Confidential Information accessed or received by Consultant, together with all copies and summaries of such Confidential Information. If requested by MEDC, Consultant will execute a written certification satisfactory to MEDC pursuant to which Consultant will represent and warrant that Consultant has returned all Confidential Information to MEDC in accordance with the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the terms of this Agreement do not operate to transfer any ownership or

other rights in or to the Confidential Information to Consultant or any other person. Consultant's obligations under this Section 6.9 are in addition to and not in lieu of Contractors' Consultant under the NDA. For purposes of this Agreement, the term "Confidential Information" means all documentation, information, and/or materials identified (orally or in writing) by MEDC as confidential and/or any documentation, information, and/or materials relating to or concerning MEDC's future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or assessed by Consultant.

6.10 Nondiscrimination. In connection with the performance of this Agreement, the Consultant shall maintain compliance with the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964 and shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, national origin, age, marital status, genetic information, honorably discharged veteran or military status, presence of a sensory, mental or physical disability, or use of a trained dog guide or service animal. Consultant shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, creed, religion, sex, sexual orientation, national origin, age, marital status, genetic information, honorably discharged veteran or military status, presence of a sensory, mental or physical disability, use of a trained dog guide or service animal or any other protected class.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and effective for all purposes as of the Effective Date.

MEDC:
Mith-ih-Kwuh Economic Development Corporation

CONSULTANT:

By: Judy Farm
Its: Chief Executive Officer

By:
Its:

Schedule 1.1
Scope of Services

[attached]

DRAFT

Schedule 1.2
Schedule

[to be inserted]

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Schedule 2.1
Fee Schedule

Subject to the terms and conditions contained in this Agreement, the Services will be completed in accordance with the following schedule:

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Exhibit A
Federal Assurances and Provisions

[to be attached]

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